

Andrew Janz, City Attorney
CITY OF FRESNO
By: Andrew Janz, City Attorney (287672)
By: Christina A. Roberson, Assistant City Attorney (284512)
2600 Fresno Street
Fresno, CA 93721
Telephone: (559) 621-7500
Facsimile: (559) 457-1084

ALESHIRE & WYNDER, LLP
ANTHONY R. TAYLOR, State Bar No. 208712
ataylor@awattorneys.com
JONATHAN BELAGA, State Bar No. 275229
jbelaga@awattorneys.com
1 Park Plaza, Suite 1000
Irvine, California 92614
Telephone: (949) 223-1170
Facsimile: (949) 223-1180

Attorneys for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

CALIFORNIA SMOKE SHOPS
ASSOCIATION, a California nonprofit
mutual benefit corporation,

Plaintiff,

v.

CITY OF FRESNO, a California public
entity; MIGUEL ARIAS, in his official
capacity; NELSON ESPARZA, in his official
capacity; ANNALISA PEREA, in her official
capacity; and BRANDON VANG, in his
official
capacity,,

Defendants.

Case No. 1:25-CV-00590-KES-HBK

Judge: Honorable Kirk E. Sherriff
Courtroom 6, 7th Floor

**DEFENDANTS CITY OF FRESNO,
MIGUEL ARIAS, NELSON ESPARZA,
ANNALISA PEREA, AND BRANDON
VANG'S ANSWER TO THE FIRST
AMENDED COMPLAINT OF
PLAINTIFF, CALIFORNIA SMOKE
SHOPS ASSOCIATION**

COMES NOW Defendants, CITY OF FRESNO, AND COUNCILMEMBERS MIGUEL
ARIAS, NELSON ESPARZA, ANNALISA PEREA, and BRANDON VANG, and hereby respond
as follows to the First Amended Complaint of Plaintiff:

I. GENERAL ALLEGATIONS/INTRODUCTION

1. As to paragraph 1 of Plaintiff's First Amended Complaint, Defendants deny the factual

1 allegations in this paragraph in its entirety. Defendants further allege that Plaintiff lacks standing to
2 assert any and all causes of action herein, and Defendant incorporates by reference said statement
3 concerning Plaintiff's lack of standing as set forth herein in each paragraph responding to Plaintiff's
4 allegations below.

5 2. As to paragraph 2 of Plaintiff's First Amended Complaint, Defendants deny the factual
6 allegations in this paragraph in its entirety.

7 3. As to paragraph 3 of Plaintiff's First Amended Complaint, Defendants deny the factual
8 allegations in this paragraph in its entirety.

9 4. As to paragraph 4 of Plaintiff's First Amended Complaint, Defendants deny the factual
10 allegations in this paragraph in its entirety.

11 5. As to paragraph 5 of Plaintiff's First Amended Complaint, Defendants deny the factual
12 allegations, to the extent that there are any, in this paragraph in its entirety.

13 **II. THE PARTIES**

14 6. As to paragraph 6 of Plaintiff's First Amended Complaint, Defendants lack sufficient
15 information to either admit or deny the factual allegations in this paragraph.

16 7. As to paragraph 7 of Plaintiff's First Amended Complaint, Defendants lack sufficient
17 information to either admit or deny the factual allegations in this paragraph.

18 8. As to paragraph 8 of Plaintiff's First Amended Complaint, Defendants admit the
19 allegations in this paragraph.

20 9. As to paragraph 9 of Plaintiff's First Amended Complaint, Defendants admit the
21 allegations in this paragraph except for the allegations related to any wrongdoing, including an
22 alleged cover-up and alleged misconduct, which Defendants deny in their entirety.

23 10. As to paragraph 10 of Plaintiff's First Amended Complaint, Defendants admit the
24 allegations in this paragraph except for the allegations related to any wrongdoing, including an
25 alleged cover-up and alleged misconduct, which Defendants deny in their entirety.

26 11. As to paragraph 11 of Plaintiff's First Amended Complaint, Defendants admit the
27 allegations in this paragraph except for the allegations related to any wrongdoing, including an
28 alleged cover-up and alleged misconduct, which Defendants deny in their entirety.

1 12. As to paragraph 12 of Plaintiff's First Amended Complaint, Defendants admit the
2 allegations in this paragraph except for the allegations related to any wrongdoing, including an
3 alleged cover-up and alleged misconduct, which Defendants deny in their entirety.

4 **III. JURISDICTION AND VENUE**

5 13. As to paragraph 13 of Plaintiff's First Amended Complaint, Defendants deny the factual
6 allegations in this paragraph, but admit that this Court has jurisdiction over the federal claims in this
7 action, without waiving Defendants' position that Plaintiff lacks standing to assert any and all causes
8 of action herein.

9 14. As to paragraph 14 of Plaintiff's First Amended Complaint, Defendants admit that this
10 Court has the power to grant relief under the cited statutes, but deny that any relief is available to
11 Plaintiffs as alleged in the Complaint, without waiving Defendants' position that Plaintiff lacks
12 standing to assert any and all causes of action herein.

13 15. As to paragraph 15 of Plaintiff's First Amended Complaint, Defendants deny the factual
14 allegations in the Complaint, but admit that venue is proper in this Court, without waiving
15 Defendants' position that Plaintiff lacks standing to assert any and all causes of action herein.

16 **IV. STATEMENT OF FACTS**

17 16. As to paragraph 16 of Plaintiff's First Amended Complaint, Defendants lack sufficient
18 information to admit or deny the allegations pertaining to Plaintiff's represented businesses, and
19 deny that Plaintiff's represented businesses are "in the same legal capacity" as other locations selling
20 the same products.

21 17. As to paragraph 17 of Plaintiff's First Amended Complaint, Defendants admit that
22 tobacco retailers must comply with several state laws, regulations, and local ordinances and
23 regulations, including, but not limited to, the cited statutes and regulations.

24 18. As to paragraph 18 of Plaintiff's First Amended Complaint, Defendants lack sufficient
25 information to admit or deny the allegations pertaining to Plaintiff's represented businesses.

26 19. As to paragraph 19 of Plaintiff's First Amended Complaint, Defendants admit the factual
27 allegations contained therein, except that they are irrelevant to this litigation.

28 20. As to paragraph 20 of Plaintiff's First Amended Complaint, Defendants deny all factual

1 allegations contained therein.

2 21. As to paragraph 21 of Plaintiff's First Amended Complaint, Defendants lack sufficient
3 information to admit or deny the allegations pertaining to Plaintiff's represented businesses.

4 22. As to paragraph 22 of Plaintiff's First Amended Complaint, Defendants lack sufficient
5 information to admit or deny the allegations pertaining to Plaintiff's represented businesses.

6 23. As to paragraph 23 of Plaintiff's First Amended Complaint, Defendants lack sufficient
7 information to admit or deny the allegations pertaining to Plaintiff's represented businesses.

8 24. As to paragraph 24 of Plaintiff's First Amended Complaint, Defendants deny all factual
9 allegations contained therein.

10 25. As to paragraph 25 of Plaintiff's First Amended Complaint, Defendants admit the factual
11 allegations contained therein.

12 26. As to paragraph 26 of Plaintiff's First Amended Complaint, Defendants admit the factual
13 allegations contained therein.

14 27. As to paragraph 27 of Plaintiff's First Amended Complaint, Defendants admit the factual
15 allegations contained therein, but not the information contained in the hyperlinks. (Defendants
16 cannot verify the link from kvpr.org, as it returns a "page not found" error.)

17 28. As to paragraph 28 of Plaintiff's First Amended Complaint, Defendants admit that the
18 City drafted and approved the Ordinance.

19 29. As to paragraph 29 of Plaintiff's First Amended Complaint, Defendants admit that the
20 City followed proper procedures and posted notices of the hearings. The document that is Exhibit 2
21 speaks for itself.

22 30. As to paragraph 30 of Plaintiff's First Amended Complaint, Defendants admit that the
23 City followed proper procedures and posted minutes of the hearings. The document that is Exhibit
24 3 speaks for itself.

25 31. As to paragraph 31 of Plaintiff's First Amended Complaint, Defendants admit that the
26 City followed proper procedures and posted minutes of the hearings. The document that is Exhibit
27 4 speaks for itself.

28 32. As to paragraph 32 of Plaintiff's First Amended Complaint, Defendants admit that the

1 City Planning Commission followed proper procedures and posted the minutes of the hearing. The
2 effects of an unadopted resolution cannot be known by Defendants.

3 33. As to paragraph 33 of Plaintiff's First Amended Complaint, Defendants deny considering
4 approval of the ordinance and instead admit to tabling the ordinance to March 13, 2025.

5 34. As to paragraph 34 of Plaintiff's First Amended Complaint, Defendants admit that the
6 City followed proper procedures and held the meetings as alleged; however, the contents of the
7 meetings are contained in the minutes and the videos, which speak for themselves.

8 35. As to paragraph 35 of Plaintiff's First Amended Complaint, Defendants admit that the
9 City followed proper procedures and held the meetings as alleged; however, the contents of the
10 meetings are contained in the minutes and the videos, which speak for themselves. Defendants deny
11 the making of any misrepresentations as alleged in subparagraphs a through e.

12 36. As to paragraph 36 of Plaintiff's First Amended Complaint, Defendants admit that the
13 City followed proper procedures and held the meetings as alleged; however, the contents of the
14 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
15 sufficient information to enable them to admit or deny any of Plaintiff's legal representations in this
16 paragraph.

17 37. As to paragraph 37 of Plaintiff's First Amended Complaint, Defendants admit that the
18 City followed proper procedures and held the meetings as alleged; however, the contents of the
19 meetings are contained in the minutes and the videos, which speak for themselves. Defendants deny
20 the argumentative commentary contained in the second sentence of the paragraph.

21 38. As to paragraph 38 of Plaintiff's First Amended Complaint, Defendants admit that the
22 City followed proper procedures and held the meetings as alleged; however, the contents of the
23 meetings are contained in the minutes and the videos, which speak for themselves. Defendants deny
24 the argumentative commentary contained in everything but the last sentence of the paragraph.

25 39. As to paragraph 39 of Plaintiff's First Amended Complaint, Defendants admit that the
26 City followed proper procedures and held the meetings as alleged; however, the contents of the
27 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
28 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the

1 facts or opinions expressed by or implied to Councilmember Maxwell as alleged in this paragraph.

2 40. As to paragraph 40 of Plaintiff's First Amended Complaint, Defendants admit that the
3 City followed proper procedures and held the meetings as alleged; however, the contents of the
4 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
5 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
6 facts or opinions expressed by or implied to Councilmember Richardson as alleged in this paragraph.

7 41. As to paragraph 41 of Plaintiff's First Amended Complaint, Defendants admit that the
8 City followed proper procedures and held the meetings as alleged; however, the contents of the
9 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
10 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
11 facts or opinions expressed by or implied to Councilmember Karbassi as alleged in this paragraph.

12 42. As to paragraph 42 of Plaintiff's First Amended Complaint, Defendants admit that the
13 City followed proper procedures and held the meetings as alleged; however, the contents of the
14 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
15 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
16 facts or opinions expressed by or implied to the Councilmembers as alleged in this paragraph.

17 43. As to paragraph 43 of Plaintiff's First Amended Complaint, Defendants admit that the
18 City followed proper procedures and held the meetings as alleged; however, the contents of the
19 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
20 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
21 facts or opinions expressed by or implied to the Councilmembers as alleged in this paragraph.

22 44. As to paragraph 44 of Plaintiff's First Amended Complaint, Defendants admit that the
23 City followed proper procedures and held the meetings as alleged; however, the contents of the
24 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
25 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
26 facts or opinions expressed by or implied to the Councilmembers as alleged in this paragraph.

27 45. As to paragraph 45 of Plaintiff's First Amended Complaint, Defendants admit that the
28 City followed proper procedures and held the meetings as alleged; however, the contents of the

1 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
2 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
3 facts or opinions expressed by or implied to the Councilmembers as alleged in this paragraph.

4 46. As to paragraph 46 of Plaintiff's First Amended Complaint, Defendants admit that the
5 City followed proper procedures and held the meetings as alleged; however, the contents of the
6 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
7 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
8 facts or opinions expressed by or implied to the Councilmembers as alleged in this paragraph.

9 47. As to paragraph 47 of Plaintiff's First Amended Complaint, Defendants admit that the
10 City followed proper procedures and held the meetings as alleged; however, the contents of the
11 meetings are contained in the minutes and the videos, which speak for themselves. Defendants deny
12 that any item on the agenda was improperly placed on the agenda.

13 48. As to paragraph 48 of Plaintiff's First Amended Complaint, Defendants admit that the
14 City followed proper procedures and held the meetings as alleged; however, the contents of the
15 meetings are contained in the minutes and the videos, which speak for themselves. Defendants deny
16 that they failed to observe proper procedures for posting public notices.

17 49. As to paragraph 49 of Plaintiff's First Amended Complaint, Defendants admit that the
18 City followed proper procedures and held the meetings as alleged; however, the contents of the
19 meetings are contained in the minutes and the videos, which speak for themselves. Defendants deny
20 that they failed to observe proper procedures for posting public notices.

21 50. As to paragraph 50 of Plaintiff's First Amended Complaint, Defendants deny that they
22 failed to observe proper procedures for posting public notices or circumvented any legal
23 requirements.

24 51. As to paragraph 51 of Plaintiff's First Amended Complaint, Defendants deny that they
25 failed to observe proper procedures for this or any meeting.

26 52. As to paragraph 52 of Plaintiff's First Amended Complaint, Defendants admit that the
27 City followed proper procedures and held the meetings as alleged; however, the contents of the
28 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack

1 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
2 facts or opinions expressed by or implied to the Councilmembers as perceived by Plaintiff and as
3 alleged in this paragraph.

4 53. As to paragraph 53 of Plaintiff's First Amended Complaint, Defendants admit that the
5 City followed proper procedures and held the meetings as alleged; however, the contents of the
6 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
7 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
8 facts or opinions expressed by or implied to the Councilmembers as perceived by Plaintiff and as
9 alleged in this paragraph.

10 54. As to paragraph 54 of Plaintiff's First Amended Complaint, Defendants admit that the
11 City followed proper procedures and held the meetings as alleged; however, the contents of the
12 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
13 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
14 facts or opinions expressed by or implied to the Councilmembers as perceived by Plaintiff and as
15 alleged in this paragraph.

16 55. As to paragraph 55 of Plaintiff's First Amended Complaint, Defendants admit that the
17 City followed proper procedures and held the meetings as alleged; however, the contents of the
18 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
19 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
20 facts or opinions expressed by or implied to the Councilmembers as perceived by Plaintiff and as
21 alleged in this paragraph.

22 56. As to paragraph 56 of Plaintiff's First Amended Complaint, Defendants admit that the
23 City followed proper procedures and held the meetings as alleged; however, the contents of the
24 meetings are contained in the minutes and the videos, which speak for themselves. Defendants deny
25 Plaintiff's allegations of impropriety in the first sentence. Defendants lack sufficient information to
26 enable them to admit or deny any of Plaintiff's representations as to the facts or opinions expressed
27 by or implied to the Councilmembers as perceived by Plaintiff and as alleged in this paragraph.

28 57. As to paragraph 57 of Plaintiff's First Amended Complaint, Defendants admit that the

1 City followed proper procedures and held the meetings as alleged; however, the contents of the
2 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
3 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
4 facts or opinions expressed by or implied to the Councilmembers as perceived by Plaintiff and as
5 alleged in this paragraph.

6 58. As to paragraph 58 of Plaintiff's First Amended Complaint, Defendants admit that the
7 City followed proper procedures and held the meetings as alleged; however, the contents of the
8 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
9 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
10 facts or opinions expressed by or implied to the Councilmembers as perceived by Plaintiff and as
11 alleged in this paragraph.

12 59. As to paragraph 59 of Plaintiff's First Amended Complaint, Defendants admit that the
13 City followed proper procedures and held the meetings as alleged; however, the contents of the
14 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
15 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the
16 facts or opinions expressed by or implied to the Councilmembers as perceived by Plaintiff and as
17 alleged in this paragraph.

18 60. As to paragraph 60 of Plaintiff's First Amended Complaint, Defendants admit that the
19 City followed proper procedures and held the meetings as alleged; however, the contents of the
20 meetings are contained in the minutes and the videos, which speak for themselves. Defendants deny
21 Plaintiff's allegations about alternate goals or improper motives as alleged in this paragraph.
22 Defendants lack sufficient information to enable them to admit or deny any of Plaintiff's
23 representations as to the facts or opinions expressed by or implied to the Councilmembers or City
24 Attorney Andrew Janz as perceived by Plaintiff and as alleged in this paragraph.

25 61. As to paragraph 61 of Plaintiff's First Amended Complaint, Defendants admit that the
26 City followed proper procedures and held the meetings as alleged; however, the contents of the
27 meetings are contained in the minutes and the videos, which speak for themselves. Defendants lack
28 sufficient information to enable them to admit or deny any of Plaintiff's representations as to the

1 facts or opinions expressed by or implied to the Councilmembers or City Attorney Andrew Janz as
2 perceived by Plaintiff and as alleged in this paragraph.

3 62. As to paragraph 62 of Plaintiff's First Amended Complaint, Defendants deny these
4 allegations in their entirety.

5 63. As to paragraph 63 of Plaintiff's First Amended Complaint, Defendants admit that the
6 ordinance passed as alleged, and further allege that the four City Councilmembers' votes in favor
7 of it were sufficient.

8 64. As to paragraph 64 of Plaintiff's First Amended Complaint, Defendants admit that the
9 ordinance passed as alleged.

10 65. As to paragraph 65 of Plaintiff's First Amended Complaint, Defendants admit that the
11 ordinance became effective on June 5, 2025.

12 66. As to paragraph 66 of Plaintiff's First Amended Complaint, Defendants deny these
13 allegations in their entirety.

14 67. As to paragraph 67 of Plaintiff's First Amended Complaint, Defendants allege that the
15 City followed proper procedures and held the meetings as alleged; however, the contents of the
16 meetings are contained in the minutes and the videos, which speak for themselves.

17 68. As to paragraph 68 of Plaintiff's First Amended Complaint, Defendants deny these
18 allegations in their entirety.

19 69. As to paragraph 69 of Plaintiff's First Amended Complaint, Defendants deny these
20 allegations in their entirety.

21 70. As to paragraph 70 of Plaintiff's First Amended Complaint, Defendants deny these
22 allegations in their entirety.

23 71. As to paragraph 71 of Plaintiff's First Amended Complaint, Defendants deny Plaintiff's
24 allegations in this paragraph to the extent that they conflict with the plain text of the ordinance and
25 the Municipal Code, which speak for themselves.

26 72. As to paragraph 72 of Plaintiff's First Amended Complaint, Defendants deny Plaintiff's
27 allegations in this paragraph to the extent that they conflict with the plain text of the ordinance and
28 the Municipal Code, which speak for themselves.

1 73. As to paragraph 73 of Plaintiff's First Amended Complaint, Defendants deny Plaintiff's
2 allegations in this paragraph to the extent that they conflict with the plain text of the ordinance and
3 the Municipal Code, which speak for themselves.

4 74. As to paragraph 74 of Plaintiff's First Amended Complaint, Defendants deny Plaintiff's
5 allegations in this paragraph to the extent that they conflict with the plain text of the ordinance and
6 the Municipal Code, which speak for themselves.

7 75. As to paragraph 75 of Plaintiff's First Amended Complaint and its subparagraphs,
8 Defendants deny Plaintiff's allegations in this paragraph to the extent that they conflict with the
9 plain text of the ordinance and the Municipal Code, which speak for themselves.

10 76. As to paragraph 76 of Plaintiff's First Amended Complaint, Defendants admit Plaintiff's
11 allegations in this paragraph, except to the extent that they conflict with the plain text of the
12 ordinance and the Municipal Code, which speak for themselves.

13 77. As to paragraph 77 of Plaintiff's First Amended Complaint, Defendants deny Plaintiff's
14 allegations in this paragraph to the extent that they conflict with the plain text of the ordinance and
15 the Municipal Code, which speak for themselves.

16 78. As to paragraph 78 of Plaintiff's First Amended Complaint, Defendants deny Plaintiff's
17 allegations in this paragraph to the extent that they conflict with the plain text of the ordinance and
18 the Municipal Code, which speak for themselves. Defendants further deny the allegations in the last
19 sentence of the paragraph in its entirety.

20 79. As to paragraph 79 of Plaintiff's First Amended Complaint, Defendants admit Plaintiff's
21 allegations in this paragraph.

22 80. As to paragraph 80 of Plaintiff's First Amended Complaint, Defendants lack sufficient
23 information to enable them to admit or deny any of Plaintiff's representations as alleged in this
24 paragraph.

25 81. As to paragraph 81 of Plaintiff's First Amended Complaint, Defendants deny the
26 allegation that other Tobacco Retailers are in the same business as the entities Plaintiff alleges it
27 represents.

28 82. As to paragraph 82 of Plaintiff's First Amended Complaint, Defendants deny that

1 Plaintiff's alleged members will suffer irreparable harm or that the allegations in subparagraphs a-f
2 constitute irreparable harm.

3 83. As to paragraph 83 of Plaintiff's First Amended Complaint, Defendants deny the
4 allegations in this paragraph in their entirety.

5 84. As to paragraph 84 of Plaintiff's First Amended Complaint, Defendants deny the
6 allegations in this paragraph in their entirety.

7 **V. FIRST CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF –**
8 **DENIAL OF PROCEDURAL DUE PROCEEDS**

9 85. As to paragraph 85 of Plaintiff's First Amended Complaint, Defendants adopt their
10 responses as outlined above to the allegations in this Paragraph.

11 86. As to paragraph 86 of Plaintiff's First Amended Complaint, Defendants deny the factual
12 allegations in this paragraph to the extent that there are any, and submit that the law and case law
13 on the Fourteenth Amendment speaks for itself.

14 87. As to paragraph 87 of Plaintiff's First Amended Complaint, Defendants admit the
15 allegations in this paragraph.

16 88. As to paragraph 88 of Plaintiff's First Amended Complaint, Defendants deny that any
17 duty was owed to Plaintiff or its members related to the events as alleged in this Complaint.

18 89. As to paragraph 89 of Plaintiff's First Amended Complaint, Defendants deny the
19 allegations in this paragraph and its subparagraphs in their entirety.

20 90. As to paragraph 90 of Plaintiff's First Amended Complaint, Defendants deny the
21 allegations in this paragraph in their entirety.

22 91. As to paragraph 91 of Plaintiff's First Amended Complaint, Defendants deny the
23 allegations in this paragraph in their entirety.

24 92. As to paragraph 92 of Plaintiff's First Amended Complaint, Defendants deny the
25 allegations in this paragraph in their entirety.

26 93. As to paragraph 93 of Plaintiff's First Amended Complaint, Defendants deny the
27 allegations in this paragraph in their entirety.

28 94. As to paragraph 94 of Plaintiff's First Amended Complaint, Defendants deny the

1 allegations in this paragraph in their entirety.

2 95. As to paragraph 95 of Plaintiff's First Amended Complaint, Defendants deny that
3 Plaintiff is entitled to the relief sought.

4 **VI. SECOND CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

5 96. As to paragraph 96 of Plaintiff's First Amended Complaint, Defendants adopt their
6 responses as outlined above to the allegations in this Paragraph.

7 97. As to paragraph 97 of Plaintiff's First Amended Complaint, Defendants deny the factual
8 allegations in this paragraph to the extent that there are any, and submit that the law and case law
9 on the Fourteenth Amendment speaks for itself.

10 98. As to paragraph 98 of Plaintiff's First Amended Complaint, Defendants admit the
11 allegations in this paragraph.

12 99. As to paragraph 99 of Plaintiff's First Amended Complaint, Defendants lack sufficient
13 information to admit or deny the allegations in this paragraph, except that they deny that other
14 retailers are similarly situated to the entities Plaintiff purports to represent.

15 100. As to paragraph 100 of Plaintiff's First Amended Complaint, Defendants deny the
16 allegations in this paragraph in their entirety.

17 101. As to paragraph 101 of Plaintiff's First Amended Complaint, Defendants deny the
18 allegations in this paragraph in their entirety.

19 102. As to paragraph 102 of Plaintiff's First Amended Complaint, Defendants deny the
20 allegations in this paragraph in their entirety.

21 103. As to paragraph 103 of Plaintiff's First Amended Complaint, Defendants deny the
22 allegations in this paragraph in their entirety.

23 104. As to paragraph 104 of Plaintiff's First Amended Complaint, Defendants deny the
24 allegations in this paragraph in their entirety.

25 105. As to paragraph 105 of Plaintiff's First Amended Complaint, Defendants deny that
26 Plaintiff is entitled to the relief sought.

27 106. As to paragraph 106 of Plaintiff's First Amended Complaint, Defendants deny that
28 Plaintiff is entitled to the relief sought.

1 **VII. THIRD CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

2 107. As to paragraph 107 of Plaintiff's First Amended Complaint, Defendants adopt their
3 responses as outlined above to the allegations in this Paragraph.

4 108. As to paragraph 108 of Plaintiff's First Amended Complaint, Defendants deny the
5 factual allegations in this paragraph to the extent that there are any, and submit that the law and case
6 law on the California Constitution speaks for itself.

7 109. As to paragraph 109 of Plaintiff's First Amended Complaint, Defendants deny the
8 factual allegations in this paragraph to the extent that there are any, and submit that the law and case
9 law on the Fourteenth Amendment speaks for itself.

10 110. As to paragraph 110 of Plaintiff's First Amended Complaint, Defendants admit the
11 allegations in this paragraph.

12 111. As to paragraph 111 of Plaintiff's First Amended Complaint, Defendants deny the
13 allegations in this paragraph in their entirety.

14 112. As to paragraph 112 of Plaintiff's First Amended Complaint, Defendants deny the
15 allegations in this paragraph in their entirety.

16 113. As to paragraph 113 of Plaintiff's First Amended Complaint, Defendants deny the
17 allegations in this paragraph in their entirety.

18 114. As to paragraph 114 of Plaintiff's First Amended Complaint, Defendants deny the
19 allegations in this paragraph in their entirety.

20 115. As to paragraph 115 of Plaintiff's First Amended Complaint, Defendants deny the
21 allegations in this paragraph in their entirety.

22 116. As to paragraph 116 of Plaintiff's First Amended Complaint, Defendants deny that
23 Plaintiff is entitled to the relief sought.

24 **VIII. FOURTH CAUSE OF ACTION – DECLARATORY RELIEF/REGULATORY**
25 **TAKING**

26 117. As to paragraph 117 of Plaintiff's First Amended Complaint, Defendants adopt their
27 responses as outlined above to the allegations in this Paragraph.

28 118. As to paragraph 118 of Plaintiff's First Amended Complaint, Defendants deny the

1 factual allegations in this paragraph to the extent that there are any, and submit that the law and case
2 law on the Fourteenth Amendment speaks for itself.

3 119. As to paragraph 119 of Plaintiff's First Amended Complaint, Defendants deny the
4 factual allegations in this paragraph to the extent that there are any, and submit that the law and case
5 law on the Fifth Amendment speaks for itself.

6 120. As to paragraph 120 of Plaintiff's First Amended Complaint, Defendants deny the
7 factual allegations in this paragraph to the extent that there are any, and submit that the law and case
8 law on the 42 U.S.C. section 1983 speaks for itself.

9 121. As to paragraph 121 of Plaintiff's First Amended Complaint, Defendants deny the
10 factual allegations in this paragraph to the extent that there are any, and submit that the law and case
11 law on the California Constitution speaks for itself.

12 122. As to paragraph 122 of Plaintiff's First Amended Complaint, Defendants deny the
13 factual allegations in this paragraph to the extent that there are any, and submit that the law and case
14 law on the definition of a regulatory taking speaks for itself.

15 123. As to paragraph 123 of Plaintiff's First Amended Complaint, Defendants deny the
16 factual allegations in this paragraph to the extent that there are any, and submit that the law and case
17 law on regulatory takings speaks for itself.

18 124. As to paragraph 124 of Plaintiff's First Amended Complaint, Defendants deny the
19 allegations in this paragraph and its subparagraphs in their entirety.

20 125. As to paragraph 125 of Plaintiff's First Amended Complaint, Defendants deny the
21 allegations in this paragraph in their entirety.

22 126. As to paragraph 126 of Plaintiff's First Amended Complaint, Defendants deny the
23 allegations in this paragraph in their entirety, and deny that Plaintiff is entitled to the relief sought.

24 **IX. AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 **(Failure to State a Valid Claim; Lack of Standing)**

27 The First Amended Complaint, and each and every purported cause of action contained
28 therein, fails to set forth facts sufficient to state a cause of action, and Plaintiff is barred from any

1 recovery against Defendants since, for among other reasons, Plaintiff lacks standing to assert any
2 and all said causes of action.

3 **SECOND AFFIRMATIVE DEFENSE**

4 **(Absolute Immunity)**

5 To the extent the Complaint, and each and every purported cause of action contained
6 therein, alleges actions taken by public officials acting in the course and scope of their duties, and
7 making statements in a public forum, Defendants are immune from liability, and Plaintiffs are
8 barred from any recovery against Defendant.

9 **THIRD AFFIRMATIVE DEFENSE**

10 **(Rational Basis)**

11 To the extent the Complaint, and each and every purported cause of action contained
12 therein, alleges an interference with Plaintiffs' rights, Defendants had a legitimate state interest in
13 enforcing the rules and policies related to the need to regulate public nuisance, and Defendants
14 had a rational basis for taking the actions they took.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 **(Compelling Government Interest)**

17 To the extent the Complaint, and each and every purported cause of action contained
18 therein, alleges an interference with Plaintiffs' fundamental rights, Defendants had a compelling
19 government interest related to the actions taken, and no less-restrictive measures were available;
20 therefore, Plaintiffs are barred from any recovery against Defendant.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 **(Legitimate, Non-Discriminatory Reason)**

23 Each and every purported cause of action alleged in Plaintiffs' Complaint is barred because
24 Defendants had legitimate, non-discriminatory reasons for the alleged conduct, and that they
25 would have made the same decisions even in the absence of any purported unlawful motive.

26 ///

27 ///

28 ///

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Statute of Limitations)**

3 To the extent that Plaintiffs allege issues and activities that occurred outside of the time-
4 window proscribed by the statute of limitations (Cal. Code Civ. Proc., § 338(1)), Plaintiffs' actions
5 are time-barred.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 **(Laches)**

8 To the extent that Plaintiffs and/or putative class members seek equitable relief for matters
9 in which they sat on their rights to the detriment of Defendants, these actions are barred by the
10 doctrine of laches.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 **(Unclean Hands)**

13 Each and every purported cause of action alleged in Plaintiff's Complaint is barred to the
14 extent Plaintiff's members engaged in wrongdoing.

15 **NINTH AFFIRMATIVE DEFENSE**

16 **(Ripeness)**

17 To the extent that Plaintiff alleges violations of their property interests and other claims
18 that are required to proceed first through state court proceedings, including without limitation
19 California Code of Civil Procedure section 1085, there was an alternate remedy available under
20 state law, and Plaintiff's claims for relief under Section 1983 are not ripe for review.

21 **TENTH AFFIRMATIVE DEFENSE**

22 **(Failure to Mitigate)**

23 Plaintiff has failed to mitigate any or all of the damages alleged in the First Amended
24 Complaint; therefore, they are precluded from recovering these damages.

25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 **(Necessity)**

27 Each and every purported cause of action alleged in Plaintiff's First Amended Complaint
28 is barred because the actions taken by Defendants were made necessary by emergency
circumstances, including the rise of a significant public nuisance.

TWELFTH AFFIRMATIVE DEFENSE

(Negligence or Willful Conduct of Plaintiff's Members)

Each and every purported cause of action in Plaintiff's First Amended Complaint is the result, at least in part, of the negligence and/or willful misconduct of certain Plaintiff's members themselves; therefore, they should be barred from recovery or their damages should be mitigated by their relative fault.

THIRTEENTH AFFIRMATIVE DEFENSE

(First Amendment Privileges)

Each and every purported cause of action alleged in Plaintiff's First Amended Complaint is barred because, to the extent that Plaintiff alleges wrongdoing on the part of the Defendants, those claims and alleged damages were the result of protected speech by City Councilmembers made in a public forum that is protected by the First Amendment to the Constitution.

FOURTEENTH AFFIRMATIVE DEFENSE

(Privileged Speech, Cal. Civ. Code §47; California Constitution § 2)

Each and every purported cause of action alleged in Plaintiff's First Amended Complaint is barred because, to the extent that Plaintiffs allege wrongdoing on the part of the Defendants, those damages were the result of speech made in a public forum protected by the Section 2 to the California Constitution and is privileged speech under California Civil Code section 47.

X. DEMAND FOR TRIAL BY JURY

Defendants hereby demand a trial by jury.

XI. PRAYER

The remainder of Plaintiff's First Amended Complaint contains Plaintiffs' request for relief, to which no response is required. To the extent a response is deemed required, Defendants denies each and every allegation contained therein and specifically denies that Plaintiff is entitled to any relief.

Except as expressly admitted above, Defendants denies each and every allegation contained in Plaintiff's First Amended Complaint.

WHEREFORE, these answering Defendants pray for judgment herein as follows:

1. That Plaintiff take nothing by way of its Complaint on file herein,

- 1 2. For costs of suit incurred herein;
- 2 3. For those costs, fees, and expenses incurred in the defense of the Complaint;
- 3 4. For attorney's fees according to proof; and
- 4 For such other and further relief as the Court may deem just and proper.


5

6 DATED: August 11, 2025

ALESHIRE & WYNDER, LLP
ANTHONY R. TAYLOR
JONATHAN BELAGA

7

8

9 By: 

10 ANTHONY R. TAYLOR

11 Attorneys for Defendants

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

PROOF OF SERVICE

**CA SMOKE SHOPS V. CITY OF FRESNO
Case No. 1:25-CV-00590-KES-HBK**

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Riverside, State of California. My business address is 3550 Vine Street, Suite 200, Riverside, CA 92507.

On August 11, 2025, I served true copies of the following document(s) described as **DEFENDANTS CITY OF FRESNO, MIGUEL ARIAS, NELSON ESPARZA, ANNALISA PEREA, AND BRANDON VANG'S ANSWER TO THE FIRST AMENDED COMPLAINT OF PLAINTIFF, CALIFORNIA SMOKE SHOPS ASSOCIATION** on the interested parties in this action as follows:

McCormick, Barstow, Sheppard,
Wayte & Carruth LLP
Todd A. Wynkoop,
Shane G. Smith
Garrett J. Wade,
7647 North Fresno Street
Fresno, California 93720

Attorneys for Plaintiff, CALIFORNIA
SMOKE SHOPS ASSOCIATION, a
California nonprofit mutual benefit
corporation

Telephone: (559) 433-1300
Facsimile: (559) 433-2300

todd.wynkoop@mccormickbarstow.com
shane.smith@mccormickbarstow.com
garrett.wade@mccormickbarstow.com

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on August 11, 2025, at Riverside, California.



Patricia A. Vasquez